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Minev, Green, and Fox (NDOC Defendants)*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ZANE M. FLOYD,

Plaintiff,

v.

CHARLES DANIELS, DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS, ET AL.,

Defendants.

Case No. 3:21-cv-00176-RFB-CLB

**NDOC DEFENDANTS'
NOTICE OF PROFFER**

Defendants Charles Daniels, Harold Wickham, William Gittere, William Reubart, David Drummond, Dr. Michael Minev, Dr. David Green, and Linda Fox (collectively, “NDOC Defendants”), by and through counsel, Aaron D. Ford, Attorney General for the State of Nevada, and D. Randall Gilmer, Chief Deputy Attorney General, hereby bring this notice of proffer.

MEMORANDUM OF POINTS AND AUTHORITIES

During the evidentiary hearing yesterday, June 28, 2021, the Director of the Nevada Department of Corrections (“NDOC”), Charles Daniels, was asked to provide the expiration date of the potassium chloride NDOC currently has in stock to complete the lethal injection required under Nevada law to carry out Plaintiff Zane Floyd’s death sentence. The Court invited counsel for the NDOC Defendants to make a proffer regarding the expiration date; however, the issue was not resolved during the evidentiary hearing given the fast-moving

1 nature of the proceedings. This notice of proffer provides the expiration date of the
 2 potassium chloride NDOC currently has in stock: July 31, 2021.¹ Mr. Floyd's counsel is
 3 already in possession of the invoice attached in Exhibit B as it was produced on June 17,
 4 2021.

5 The NDOC Defendants believe the July 31st expiration date of the potassium
 6 chloride is highly relevant to the Court's analysis of injunctive relief or a stay.² Specifically,
 7 Floyd's execution is currently set for the week of July 26, 2021, the expiration date
 8 demonstrates that the NDOC Defendants will suffer actual prejudice under a three-to-four-
 9 month preliminary injunction and/or stay as NDOC will be deprived of a known drug for
 10 use in the lethal injection. NDOC can no longer obtain potassium chloride through the
 11 ordinary means by which NDOC purchases medications.³ Because this information is
 12 directly pertinent to the Court's consideration of the factors require Floyd must show for
 13 injunctive relief or a stay, the NDOC Defendants submit the instant notice of proffer. The
 14 NDOC Defendants are willing to make themselves available for a telephonic or video
 15 hearing today should the Court believe further inquiry into this issue is necessary.

16 Respectfully submitted on this 29th day of June, 2021, by:

17 AARON D. FORD
 18 Attorney General

19 By: /s/ D. Randal Gilmer
 20 D. Randall Gilmer (Bar No. 14001)
 21 Chief Deputy Attorney General

22 *Attorneys for NDOC Defendants*

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 25 ¹ See **Exhibit A**, Declaration of NDOC's Pharmacy Director Linda Fox; **Exhibit B**,
 Cardinal Health Invoice.

26 ² *Winter v. Natural Resources*, 555 U.S. 7, 24 (2008) (injunctive relief factors); *United*
 27 *States v. Mitchell*, 971 F.3d 993, 996 (9th Cir. 2020) (citing *Nken v. Holder*, 556 U.S. 418,
 433 (2009)) (stay factors).

28 ³ **Exhibit A**, ¶¶ 9–10.